

Notice of Allowability

Application No.

10/646,243

Examiner

Navin Natnithithadha

Applicant(s)

BARDY, GUST H.

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Interview, 01 June 2007.
2. ☒ The allowed claim(s) is/are 1-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

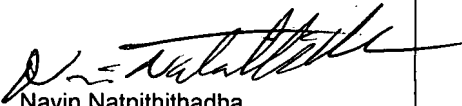
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 20070605.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Navin Natnithithadha
Patent Examiner
Art Unit 3735

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Krista Wittman on 01 June 2007.

The application has been amended as follows:

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1. (currently amended): A system for diagnosing and monitoring respiratory insufficiency for automated remote patient care, comprising:

a database storing a plurality of monitoring sets which each comprise recorded measures relating to patient information recorded on a substantially continuous basis;
and

a server retrieving and processing a plurality of the monitoring sets, comprising:

a comparison module determining a patient status change by comparing at least one recorded measure from each of the monitoring sets to at least one other recorded measure with both recorded measures relating to a same type of patient information; and

an analysis module testing the patient status change against an indicator threshold corresponding to the same type of patient information as the recorded measures which were compared, the indicator threshold corresponding to a

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pathophysiology indicative of ~~at least one of~~: an onset of respiratory insufficiency if a finding of respiratory insufficiency was not previously diagnosed, a progression or regression of respiratory insufficiency if respiratory insufficiency was previously diagnosed, regression, and a status quo of respiratory insufficiency if no such patient status change is detected.

12. (currently amended): A method for diagnosing and monitoring respiratory insufficiency for automated remote patient care, comprising:

storing a plurality of monitoring sets which each comprise recorded measures relating to patient information recorded on a substantially continuous basis in a database;

retrieving a plurality of the monitoring sets from the database;

determining a patient status change by comparing at least one recorded measure from each of the monitoring sets to at least one other recorded measure with both recorded measures relating to a same type of patient information; and

testing the patient status change against an indicator threshold corresponding to the same type of patient information as the recorded measures which were compared, the indicator threshold corresponding to a pathophysiology indicative of ~~at least one of~~: an onset of respiratory insufficiency if a finding of respiratory insufficiency was not previously diagnosed, a progression or regression of respiratory insufficiency if respiratory insufficiency was previously diagnosed, regression, and a status quo of respiratory insufficiency if no such patient status change is detected.

23. (currently amended): A computer-readable storage medium holding code for diagnosing and monitoring respiratory insufficiency for automated remote patient care, comprising:

code for storing a plurality of monitoring sets from a database which each comprise recorded measures relating to patient information recorded on a substantially continuous basis;

code for retrieving a plurality of the monitoring sets from the database;

code for determining a patient status change by comparing at least one recorded measure from each of the monitoring sets to at least one other recorded measure with both recorded measures relating to a same type of patient information; and

code for testing the patient status change against an indicator threshold corresponding to the same type of patient information as the recorded measures which were compared, the indicator threshold corresponding to a pathophysiology indicative of ~~at least one of:~~ an onset of respiratory insufficiency if a finding of respiratory insufficiency was not previously diagnosed, a progression or regression of respiratory insufficiency if respiratory insufficiency was previously diagnosed, regression, and a status quo of respiratory insufficiency if no such patient status change is detected.

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REASONS FOR ALLOWANCE

2. Claims 1, 12, and 23 have been amended. Claims 1-30 are pending.
3. In a telephonic interview on 01 June 2007, the Amendment, filed on 06 March 2007, of the independent claims 1, 12, and 23 to have the limitation "the indicator threshold corresponding to a pathophysiology indicative of at least one of an onset, progression, regression, and status quo of respiratory insufficiency" (emphasis added) and the Applicant's Remarks, filed on 06 March 2007, made it unclear as to whether the determination of respiratory insufficiency outcomes is in the alternative (due to the phrase "at least one of"), where determining one of the four outcomes is sufficient, or whether each of the four possible outcomes are possible based on respective outcome conditions (see *Remarks*, filed on 06 March 2007, pp. 2-3). The Examiner and Applicant's Representative, Krista Wittman, discussed and approved the amendment above.
4. Claims 1-30 are allowed.
5. The following is an examiner's statement of reasons for allowance:
Claims 1-30: The prior art of record does not teach diagnosing a medical condition, such as respiratory insufficiency and monitoring that medical condition, by testing for four possible outcomes: onset, progression, regression, and status quo, any of which outcome can potentially be determined based on certain conditions. If a finding of respiratory insufficiency has not previously been diagnosed, a determination of respiratory insufficiency onset is possible (Spec., p. 29, lines 4-6). If respiratory insufficiency was previously diagnosed, a determination of respiratory insufficiency

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progression or regression is possible (Spec., p. 29, lines 7-10). Moreover, if no change is detected, a determination of status quo is possible (Spec., p. 29, lines 10-13). In contrast, Krausman fails to teach or suggest determining an onset, progression, regression, and status quo of respiratory insufficiency based on the claimed conditions of each outcome.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Navin Natnithithadha
Patent Examiner
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06/11/2007